

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OYSTER OPTICS, LLC,

Plaintiff,

vs.

CIENA CORPORATION,

Defendant.

) Case Number: 4:17-cv-05920-JSW

) **RESPONSE TO ORDER TO SHOW**
) **CAUSE WHY OYSTER-FUJITSU**
) **AGREEMENT SHOULD BE UNDER**
) **SEAL IN ITS ENTIRETY (DKT NO. 256)**

Plaintiff Oyster Optics, LLC (“Oyster”) hereby responds to the Court’s Order to Show Cause Why Oyster-Fujitsu Settlement Agreement Should Be Filed Under Seal In Its Entirety dated April 3, 2023 (Dkt. No. 256), as follows.

Oyster requested that its settlement agreement (the “OFA”) with Fujitsu Ltd. and Fujitsu Network Communications (collectively “Fujitsu”) be filed under seal due its general policy, as a patent licensing entity, that its patent licenses be treated as confidential. If the entirety of the OFA were made public this could enact business harm on Oyster in future licenses. Further, Oyster was aware that Fujitsu, a third-party to this proceeding, likewise treated the terms of the OFA as confidential and desired the terms of the document remain out of the public record as much as possible.

At the time the request to file the OFA under seal in its entirety was made Oyster, and its attorneys, inadvertently failed to consider Judge Gilstrap’s Order in *Oyster Optics, LLC v. Coriant Am., Inc.*, No. 16-cv-01302-RJG, 2018 U.S. Dist. LEXIS 236708, (E.D. Tex. Dec. 4,

2018), making public the full text of Sections 1.1, 1.2, 1.3, 1.6, 3.1, and 4.1. Oyster agrees that those sections may be filed publicly, and withdraws its request that the OFA be filed entirely under seal as to those sections.

Upon receipt of this Court's Order to Show Cause, Oyster conferred with counsel for Fujitsu about whether additional provisions of the OFA could be filed under seal. Fujitsu's counsel informed Oyster that it desired for any section not specifically made public by Judge Gilstrap's Order to remain under seal.

To assist the Court, Oyster attaches as Exhibit A a partially redacted version of the OFA making the public the sections recited in Judge Gilstrap's Order.

DATED: April 17, 2023

By: /s/ Paul A. Kroeger

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on April 17, 2023, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Paul A. Kroeger